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COVID-19 Litigation Update: Federal Judge Dismisses Gym's Complaint, Finding No Viable Constitutional Challenge to Public Health Orders

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In a closely watched victory for counties, cities and public officials, on October 27 Judge Mendez of the U.S. District Court, Eastern District, granted the County of San Joaquin and the City of Lodi's joint motion to dismiss in full, without leave to amend, a gym's challenge to COVID-19 Public Health Orders that placed limits on its operations. The Court found as a threshold matter that plaintiffs had not identified any constitutionally protected right that was being infringed by the Public Health Orders. Moreover, the Court also found neither the law nor the circumstances of plaintiffs' situation had changed since the Court's prior order on May 22, 2020 which denied plaintiffs' request for a TRO and a preliminary injunction based in part on not meeting the threshold to establish success on the merits. (*Best Supplement et al. v. Newsom et al.* (Case No. 20-cv-00965))
Plaintiffs Failed Under *Jacobson* and Traditional Constitutional Analysis

Plaintiffs, a gym and its owner, alleged nine causes of action challenging COVID-19 Public Health Orders on the theory that the temporary restrictions placed on gyms are unconstitutional infringements of their rights. The alleged constitutional violations included freedom of assembly, association and speech; equal protection and due process of the law; and 5th Amendment takings; among others. The Court found that the deferential two-pronged test set forth in *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905) is the appropriate standard to apply in evaluating the constitutionality of the Public Health Orders at issue and that plaintiffs failed to state any claims under this standard. *Jacobson* has been continually recognized as the metric to evaluate the propriety of public health orders during the COVID-19 pandemic. The two prong analysis examines:

1. First Prong – The Court found that plaintiffs did not meet the first prong of the test by failing to



allege new facts to show that the Public Health Orders lacked a real and substantial connection to protecting public health.

2. Second Prong – The Court also found that plaintiffs failed to allege facts that satisfied the second prong of the test as they did not identify any fun-

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damental right at issue and did not demonstrate that there was a plain and palpable invasion of a clearly protected right.

The Court also held that even under traditional constitutional analysis of non-emergency situations the plaintiffs failed to state any viable claims as a matter of law. The ruling addressed each claim individually and explained how plaintiffs failed to state a claim on each of their nine causes of actions. The judge dismissed the entire case with prejudice, including all nine constitutional causes of action.

Takeaways and Next Steps

In essence, there are no fundamental or constitutional rights to exercise indoors, nor are there any First Amendment free speech protections to communicate with trainers or fellow gym patrons. Plaintiffs' claims about economic loss and other alleged business related injuries from the restrictions also did not form the basis for any constitutional cause of action. The Court noted that the virus is a serious and deadly challenge to public health and the only way the government has thus far been able to reduce the spread of the virus is through public health orders limiting

in-person activities. The Court also acknowledged the personal and economic hardships that may be caused by complying with Public Health Orders and noted that those who do comply, including plaintiffs, should be commended for abiding by necessary temporary restrictions. However, the Court clearly and unequivocally found that the limitations placed on plaintiffs' gym by the Public Health Orders at issue did not form the basis for any viable constitutional challenge as a matter of law. Plaintiffs have indicated that they intend to appeal the Court's October 27, 2020 ruling and judgment.

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